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09/395,106	09/14/1999	JAMES A. WESTHOFF	POL3.036	5428
3624	7590	08/06/2004	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20

Application Number: 09/395,106  
Filing Date: September 14, 1999  
Appellant(s): WESTHOFF ET AL.

**MAILED**

SEP 03 2004

**GROUP 3600**

Louis Weinstein  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 1/23/2003.

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**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

The application contained claims 1-46

Claims 1-20, 27-29, 37-40, 42-44 have been canceled.

Claims 30-36 have been allowed.

Claims 21-26, 41, 45-46 have been rejected.

Claims 21-26, 41 and 46 have been appealed.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 21-26, 41, 45-46 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *Claims Appealed***

A substantially correct copy of appealed claim 46 appears on page 15 of the Appendix to the appellant's brief. The minor errors are as follows: claim 45 should have been claim 46 instead.

**(9) Prior Art of Record**

1185765	Brooks	6-1916
2606498	Summerlin et al	9-1976
3974615	Ditcher	8-1976
6200059	Sawdon et al	3-2001
4100997	Peacock	7-1978

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by Brooks.

Brooks (figure 1) shows an insert having a hollow substantially cylindrical shaped elongated housing having a having a cylindrical outer surface and having an open end and a close end (4), one of said ends having an exterior surface having a flange (6, figure 3) lying in a plane perpendicular to longitudinal axis of said housing, an interior surface of said housing

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having a portion thereof being provided with a plurality of annular projections (the threads) arranged at spaced intervals and extending radially inward.

Claims 21-26 were mistakenly rejected as anticipated by Brooks in the Final Office action and hereby withdrawn. Only claim 41 is rejected as anticipated by Brooks as stated above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 21-26, 45, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks in view of Summerlin et al (AU2606498).

Brooks (figure 1) shows an insert having a hollow substantially cylindrical shaped elongated housing having an open end and a close end (4), one of said ends having a flange (10) lying in a plane diagonally aligned with a longitudinal axis of said housing, another one of said ends having a flange (8) lying in a plane perpendicular to said longitudinal axis, an interior surface of said housing having a portion thereof being provided with a plurality of annular projections (the threads) arranged at spaced intervals and extending radially inward, each projection having a tapering cross-section defined by a first surface diagonally aligned with the longitudinal axis and facing the open end (the tapering surface of the thread when looked upon

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from the open end), a plurality of ears (6) integrally joined at the open end of said housing and projecting away from the housing, each having a hooked-shaped configuration and cooperating with a flange adjacent said open end to embrace a marginal portion surrounding an opening, said end at said open end adapted to cover an opening to prevent seepage therethrough (inherently can be adapted to do so), a second plurality of flanges (8) extending radially outwardly from the housing and spaced along the housing, said closed end having a flange (8) integral with said housing and extending radially outward therefrom, a portion of said housing adjacent to said closed ends and a said closed end having a thickness which is chosen to provide additional structural strength (inherently so from the structure), at least an exterior portion(10) of the surface of the closed end being inclined relative to said longitudinal axis, the diagonally aligned flange lies in a plane (inherently so as the flange lies in at least one plane, the claim does not require that the flange has to be in one plane only).

Brooks does not show the second surface of the projections being perpendicular to said longitudinal axis and facing the closed end.

Summerlin (figure 2) shows an insert having internal projections (14) having tapering cross section defined by a first surface diagonally aligned with the longitudinal axis and facing an open end, a second surface perpendicular (from the look of the mating parts) to said longitudinal axis and facing another end.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brooks' projections to show the second surface being perpendicular to said longitudinal axis and facing the closed end because the examiner takes Official Notice of the equivalence of the projections with a surface perpendicular to a longitudinal axis and the

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projections with a second surface diagonally aligned with the longitudinal axis for their use in the insert and anchor art and the selection of any of these known equivalents to anchor a pin would be within the level ordinary skill in the art.

**(11) Response to Argument**

With respect to applicant's argument that Brooks does not show "one of the open end and a closed end having a flange lying in a plane diagonally aligned with a longitudinal axis of the housing", examiner respectfully disagrees. Brooks figure 1 shows the frusto-conical flange being in a plane as cross section of the flange clearly shows the flange in a plane. Also, the claim language does not require that the flange has to lay entirely in a plane. The argument is thus moot.

With respect to applicant's argument about the usage of the Brook's insert, examiner respectfully points out that applicant only claims a subcombination to an insert and not to a combination with a mold assembly thereof. Brooks shows an insert also, and thus inherently able to function as claimed.

With respect to applicant's argument about the combination of Brooks and Summerlin, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The argument is thus moot.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

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7/27/04

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